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SUBJECT: MILITARY JUSTICE OFFSITE YIELDS PROGRESS

SUMMARY

¶1. At an offsite conference in Paipa organized and funded primarily by SOUTHCOM with USAID and DOJ support, senior Ministry of Defense and Prosecutor General's office officials made progress in addressing extrajudicial killings by military personnel. Participants discussed their interpretations of current rules, regulations, and laws, calling the conference an unprecedented opportunity to discuss these issues in a frank manner. The military and the Prosecutor General's office agreed to set up working groups on jurisprudential and operational issues that would make recommendations aimed at facilitating civilian investigations of combat deaths, increasing communication between civilian and military officials, and better defining Colombia's legal framework governing the application of force. END SUMMARY.

¶2. The USG hosted an offsite conference in Paipa on February 20-21 entitled "Public Forces and the Administration of Justice." High-level participants included Commander General of the Colombian Armed Forces General Freddy Padilla, Commander of the Army General Mario Montoya, Director of Military Penal Justice Luz Marina Gil, Vice Minister of Defense Sergio Jaramillo, Prosecutor General Mario Iguaran, National Director of the Prosecutor general's office German Ortega, Director of the Human Rights Unit of the Prosecutor General's office Sandra Castro, Director of the Technical Investigation Corps (CTI) Marilu Mendez. Other senior level officials and military representatives of the Ministry of Defense (MOD) and the Prosecutor General's office attended, as well as officials from the UN High Commission for Human Rights (UNHCHR) and the International Red Cross (ICRC), the Inspector General's office, the Human Rights Ombudsman's office, and the Presidential Program on Human Rights.

BUILDING TRUST

¶3. Ambassador Brownfield opened the conference by underscoring that respect for human rights and the rule of law are key to establish the military's legitimacy and to sustaining the popular support needed for a successful counter-terrorst campaign. He said inter-agency cooperation based on strong leadership, training, and education are crucial to achieving these goals.

¶4. The Ambassador's call for cooperation was echoed by General Padilla and Prosecutor General Iguaran. Both

acknowledged existing tensions between the military and the Prosecutor's office; but, they agreed the military and the judicial system must have a zero-tolerance policy on human rights abuses. The legitimacy of military operations was strengthened by transparent investigations and prosecution of violators. Padilla said democratic security is a national priority, and confidence-building and establishing credibility among state actors on human rights are top priority.

WORKING GROUPS AND THE WAY AHEAD

¶5. The MOD and the Prosecutor General's office agreed to continue working together to ensure effective investigations on human rights abuses, including improved training and the development of protocols defining the investigative functions and responsibilities of civilian and military authorities. The military and Prosecutor General's office agreed to discuss the creation of a permanent working group--supported by the ICRC--to define the applications of International Humanitarian Law (IHL or the law of war) in the Colombian context. In addition, the MOD agreed to brief members of the Prosecutor General's office on military rules of engagement, military operational law, and the FARC's modus operandi in operations. The Prosecutor General's office agreed to engage MOD on areas of joint and cross training, including increased MOD understanding of civilian jurisdiction, criminal law, and procedure.

¶6. The MOD offered to invite regional and local human rights prosecutors to a series of seven divisional conferences to be held over the next several months to improve communication between local officials and to review local security and operational situations. The MOD suggested that the conference agendas would replicate the agenda from Paipa but incorporate a wider pool of participants.

FOCUS ON PRACTICAL ISSUES

¶7. CTI Director Mendez, Human Rights Unit Director Castro, and Army Commander General Montoya discussed how to develop a working framework to move forward. Areas for discussion include protocols on crime scene and evidence issues, access to witnesses and evidence, and logistical support for CTI investigators, forensic experts and prosecutors to get to crime scenes. Military Criminal Justice (MPJ) Director Luz Marina Gil said MPJ would present a list of cases that lacked any response from the Prosecutor General in terms of jurisdiction. Gil emphasized that 137 cases of potential extrajudicial killings had already been transferred from the military to ordinary justice system from 2005-2007, and noted that continued coordination of cases with the Fiscalía will be an integral part of the military justice reform process.

¶8. The Prosecutor General's office offered to provide a flow chart describing the civilian investigation process. MOD and MPJ will also work to promote more effective military first responder actions. The Prosecutor General's office emphasized the critical importance in their investigators getting to a potential crime scene as quickly as possible and ensuring there is minimal disturbance of the scene. The Prosecutor General's office also noted the need to gain access to military evidence which may be relevant to the investigation of incidents. The MOD stressed the need for the Prosecutor General's office to share evidence when the military is also conducting criminal investigation. This exchange highlighted the continuing problem of parallel investigations and a need for clearer and quicker decisions on case jurisdiction.

SCOPE OF MILITARY JURISDICTION STILL IN DEBATE

19. Colombia's legal framework governing the application of force was central to the discussion. The participants identified several key issues including timely determination of jurisdiction, i.e., civilian vs. military, legal value of rules of engagement, and the circumstances in which IHL should apply. Vice Minister Jaramillo reiterated that there is a pressing need for more transparent investigations, clear protocols between military and civilian authorities, and the need for greater trust by the military in the civilian legal system. The Embassy offered to bring in international law experts to support a small inter-agency working group focused on clarifying the legal framework.

Brownfield